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IN THE
COURT OF APPEALS OF INDIANA

ONICE FIELDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 13A01-0808-CR-398
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CRAWFORD CIRCUIT COURT
The Honorable K. Lynn Lopp, Judge
Cause No. 13C01-0307-FD-095

March 9, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Onice Fields appeals his convictions for Possession of Marijuana,[1] a class D felony, Maintaining a Common Nuisance,[2] a class D felony, and Possession of Paraphernalia,[3] a class B misdemeanor. Specifically, Fields argues that his convictions must be reversed because the probable cause that was purportedly established for the issuance of a search warrant was based entirely on hearsay evidence. Thus, Fields maintains that the drugs and paraphernalia that were seized from his property should not have been admitted into evidence. Finding no error, we affirm the judgment of the trial court.

FACTS

On July 27, 2003, Indiana State Police Trooper Kirby Stailey obtained a search warrant for Deanna Collier's residence in Orange County. During the search, Trooper Stailey seized over thirty grams of marijuana. Other state troopers detained Collier at her place of employment in Mitchell. During the course of a consensual search of Collier's vehicle, the officers seized nearly one-half pound of marijuana and $3000 in cash.

Thereafter, the officers transported Collier to the Mitchell Police Department, where she gave a statement to Trooper Stailey after waiving her Miranda[4] rights. Collier informed Trooper Stailey that she had obtained approximately one pound of marijuana from Fields at his residence in Crawford County earlier that same day. She advised

[1] Ind. Code § 35-48-4-11.

[2] I.C. § 35-48-4-13.

[3] I.C. § 35-48-4-8.3.

[4] Miranda v. Arizona, 384 U.S. 436 (1966).

Trooper Stailey that Fields had "fronted" her the marijuana and she would pay him $2000 for it at a later time. Tr. p. 30. Collier also told Trooper Stailey that she had purchased nearly twenty pounds of marijuana on several occasions from Fields over a two-to three-year period.

Trooper Stailey used the information that he learned from Collier in preparing an affidavit for probable cause and obtaining a warrant for the search of Fields's property. Trooper Stailey averred that he believed that Collier was truthful "based on the affiant's independent investigation and because those statements obtained went against the penal interest of . . . Collier after being duly advised of her Miranda warnings." Appellant's App. p. 36.

The trial court issued the search warrant and the police officers proceeded to Fields's residence. During the execution of the warrant, Trooper Stailey and the other officers seized marijuana seeds, digital scales, a pipe, some marijuana-growing literature, approximately $1850 in cash, and over 700 marijuana plants growing on Fields's property to the south of his residence.

Fields was charged with possession of marijuana, possession of paraphernalia, and maintaining a common nuisance. On December 12, 2003, Fields moved to suppress the evidence that the police officers seized from his property. The trial court conducted a number of suppression hearings, and the last one concluded on December 4, 2006. Thereafter, on December 8, 2007, Fields filed a memorandum in support of his motion to suppress. Fields claimed that the evidence seized from his property was inadmissible because Trooper Stailey relied entirely upon hearsay evidence when he applied for the

search warrant. Thus, Fields claimed that because Collier's statements failed to establish that she was credible and reliable, the evidence could not be admitted at trial.

The trial court denied Fields's motion to suppress on January 4, 2007, and determined that

> Deanna Collier gave statements against her penal interest by indicating she had gotten drugs from the Defendant more than once. Furthermore, the informant subjected herself to further criminal charges if she gave false information. The risk of prosecution for an inaccurate statement was perhaps the risk of harsher treatment by the prosecution in the form of harder plea bargaining afforded the requisite indication of reliability.

Id. at 60. Thereafter, on January 19, 2007, the trial court certified the matter for interlocutory appeal. However, this court declined to accept the case, and a jury trial commenced on July 2, 2008. Fields was found guilty as charged and the trial court subsequently sentenced him to a twenty-four-month term of imprisonment. Fields now appeals.

DISCUSSION AND DECISION

In addressing Fields's contention that the evidence seized from his property was inadmissible, we initially observe that the trial court has broad discretion in ruling on the admissibility of evidence. Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. Ap. 2003). This court will reverse a trial court's ruling on the admissibility of evidence only when it constitutes an abuse of discretion. Id. An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id.

The Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution require that warrants only be issued "upon probable cause,

supported by oath or affirmation." Evidence that is seized in violation of these provisions must be suppressed. Mapp v. Ohio, 367 U.S. 643, 6456 (1961); Hirshey v. State, 852 N.E.2d 1008, 1012 (Ind. Ct. App. 2006). Search warrants must describe with particularity the place to be searched and the items to be seized. Sowers v. State, 724 N.E.2d 588, 589 (Ind. 2000). When an affidavit supporting a search warrant is based on hearsay, the affidavit must either:

> (1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or
>
> (2) contain information that establishes that the totality of the circumstances corroborates the hearsay.

Ind. Code § 35-33-5-2.

We also note that once the State has obtained a magistrate's determination of probable cause, "a presumption of validity obtains." Stephenson v. State, 796 N.E.2d 811, 814 (Ind. Ct. App. 2003). When that presumption exists, the burden is on the defendant to rebut that presumption. Id. Additionally, our Supreme Court has held that declarations against penal interest can furnish sufficient basis for establishing the credibility of an informant. Houser v. State, 678 N.E.2d 95, 100 (Ind. 1997).

As discussed above, the evidence demonstrates that Collier told Trooper Stailey that she had purchased nearly twenty pounds of marijuana from Fields over a two-to three-year period. Tr. p. 16, 30-31. Collier detailed the nature of the transactions and Trooper Robert Hornbrook explained to Collier that her assistance with the investigation of Fields—the "bigger target" in the conspiracy to sell marijuana—would be noted. Id. at

31. However, he made no promises regarding her cooperation. Id. In essence, Collier subjected herself to multiple counts of dealing in marijuana over the course of a two-to three-year period. Collier told the officer that Fields "fronted" her the marijuana to resell, and the evidence indicated that she was doing just that. As a result, it is apparent that Collier made these statements against her penal interest.

Notwithstanding these circumstances, Fields relies on this court's opinion in Hirshey v. State, 852 N.E.2d 1008 (Ind. Ct. App. 2006), for the proposition that an informant's statements against his or her penal interest must subject that individual to greater criminal liability before reliability can be established. Appellant's Br. p. 11. In Hirshey, the evidence demonstrated that the informant, Godsey, was arrested for dealing in methamphetamine, a class A felony. 852 N.E.2d at 1011. During an interview with the State Police, Godsey indicated that she purchased drugs from Hirshey on a regular basis and agreed to try to make a controlled purchase from him. After Godsey was unable to contact Hirshey, the detectives obtained a search warrant for Hirshey's residence based on Godsey's statements. A search warrant was issued, and the police seized weapons and drugs from the residence. A jury found Hirshey guilty of numerous offenses, and he appealed. A different panel of this court reversed Hirshey's convictions that stemmed from the issuance of the warrant and determined that

> In cases where we have found that the statements were against penal interest, the declarants have potentially exposed themselves to greater criminal liability. Creekmore [v. State,] 800 N.E.2d 230 [Ind. Ct. App. 2003]; Leicht v. State, 798 N.E.2d 2004 (Ind. Ct. App. 2003), trans. denied. In Creekmore and Leicht, the declarants were found in possession of drugs and made statements implicating themselves in dealing. However, in this case, Godsey had already been arrested for dealing methamphetamine as a

> class A felony, and her statements did not tend to expose her to any greater criminal liability. On the contrary, Godsey offered information about Hirshey to receive leniency. In such cases, our court has held that the statements were not against penal interest. Newby v. State, 701 N.E.2d 593, 600 (Ind. Ct. App. 1998) (statement was not against penal interest when declarant was told he would probably not be prosecuted if he revealed his source). Godsey's statements were not against her penal interest, and because there is no other indication that her statements were reliable, the warrant lacked probable cause.

Id. at 1012, 1013 (emphasis added). In arriving at its holding, the Hirshey court also commented on our Supreme Court's opinion in State v. Spillers, 847 N.E.2d 949 (Ind. 2006):

> Our supreme court ruled that a particular hearsay statement was not against penal interest. The declarant had been caught "red-handed" with drugs and named his supplier. The Court ruled that the statement "was less a statement against his penal interest than an obvious attempt to curry favor with the police." Id. at 956. The Court noted that a person arrested in incriminating circumstances has a strong incentive to shift the blame. Id. Although providing false information might have subjected the declarant to further prosecution for false informing as a class A or B misdemeanor, such an offense is negligible in comparison to the felony charges he was already faced with. Id. at 957 n. 8.

Hirshey, 852 N.E.2d at 1013 n.1 (emphasis added).

In essence, the Spillers court concluded that because the informant had been caught, the decision to reveal his source did not subject him to any additional criminal liability and punishment other than a lesser charge of false informing. Indeed, as the majority in Spillers observed, the informant had been charged with a class A felony, and any false statements to the police would have, at best, subjected him to liability for an additional misdemeanor. 847 N.E.2d at 957 n.8. As a result, the particular facts of that case dictated that the informant's declarations were not against his penal interest. Id. at

956 (Boehm, J., dissenting, observing that "the risks of prosecution for the inaccurate statements and perhaps more significantly, the risk of harsher treatment by the prosecution in the form of multiple counts and harder plea bargaining afford the requisite indicia of reliability").

Unlike the evidence that was presented in Spiller and Hirshey, we find it unlikely that Collier would mislead the police during their investigation in these circumstances. Although Collier had been arrested, she potentially faced multiple counts for dealing in marijuana and consecutive sentences based upon the statements that she gave to the police—in addition to a lesser charge of false informing. Indeed, Collier admitted committing additional criminal offenses under circumstances that would likely have gone undetected. Therefore, when evaluating the circumstances in this case, we conclude that Collier's credibility was established in light of the statements that she made against penal interest. Thus, Fields does not prevail on his claims that the search warrant was invalid and that the evidence seized from his property should have been suppressed.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.